

1 TYLER R. DOWDALL, State Bar No. 258950  
*tdowdall@tarterkrinsky.com*  
2 RENATA A. GUIDRY, State Bar No. 227713  
*rguidry@tarterkrinsky.com*  
3 **TARTER KRINSKY & DROGIN LLP**  
2029 Century Park East, Suite 400N  
4 Los Angeles, California 90067  
Telephone: (424) 330-8580/(424) 425-7486  
5 Facsimile: (315) 512-1465

6 *Attorneys for Defendant/Counterclaim-Plaintiff*  
CHOICE ELECTRONICS INC.

7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

10 NETGEAR INC.,

CASE NO. 3:25-cv-02601-RS

11 Plaintiff,

**DEFENDANT'S ANSWER,  
AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS**

12 v.

**JURY TRIAL DEMANDED**

13 CHOICE ELECTRONICS INC.,

District Judge: Hon. Richard Seeborg

14 Defendant.

15 CHOICE ELECTRONICS INC.,

16 Counterclaim-Plaintiff,

17 v.

18 NETGEAR INC.,

19 Counterclaim-Defendant.

20

21

22

23

24

25

26

27

28

---

DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

## **NATURE OF THIS ACTION**

8       1.     Defendant admits that the Complaint purports to seek injunctive relief  
9 and damages; however, Defendant denies that the action has any legal merit.  
10 Defendant denies the remaining allegations of paragraph “1” of the Complaint.

## **JURISDICTION AND VENUE**

12        2.      Defendant admits that the Court has subject matter jurisdiction over this  
13 action; however, Defendant denies that the action has any legal merit.

14 3. Defendant denies the allegations in paragraph “3” of the Complaint.  
15 4. Defendant denies the allegations in paragraph “4” of the Complaint.

## PARTIES

17 5. Defendant denies the allegations of paragraph "5" of the Complaint in  
18 that it presently lacks sufficient knowledge or information upon which to form a belief  
19 as to the truth thereof.

20        6.      Defendant admits that it is a New York corporation with an address at  
21 478 Albany Ave, Suite #5, Brooklyn, NY 11203 and that its Amazon seller name is  
22 Choice Electronics(Serial      Numbers      Recorded)      with      Merchant      ID  
23 A18UQSTHS8A7FY.      Defendant admits that it has sold NETGEAR branded  
24 products through online marketplaces, including the Amazon.com marketplace.  
25 Defendant denies the remaining allegations of paragraph “6” of the Complaint.

## **FACTS GIVING RISE TO THIS ACTION**

27       7.     Defendant admits that the U.S. Patent and Trademark Office (“USPTO”)  
28 has issued U.S. Registration No. 2,124,219 for NETGEAR on, *inter alia*, “computer

1 network interconnection hardware, namely, routers, bridges, hubs, and switches" and  
 2 U.S. Registration No. 5,760,720 for NETGEAR on "", according to the database  
 3 maintained by the USPTO. Defendant otherwise denies the allegations of paragraph  
 4 "7" of the Complaint in that it presently lacks sufficient knowledge or information  
 5 upon which to form a belief as to the truth thereof.

6       8.    Defendant denies the allegations of paragraph "8" of the Complaint in  
 7 that it presently lacks sufficient knowledge or information upon which to form a belief  
 8 as to the truth thereof.

9       9.    Defendant denies the allegations of paragraph "9" of the Complaint in  
 10 that it presently lacks sufficient knowledge or information upon which to form a belief  
 11 as to the truth thereof.

12      10.   Defendant denies the allegations of paragraph "10" of the Complaint in  
 13 that it presently lacks sufficient knowledge or information upon which to form a belief  
 14 as to the truth thereof.

15      11.   Defendant denies the allegations of paragraph "11" of the Complaint in  
 16 that it presently lacks sufficient knowledge or information upon which to form a belief  
 17 as to the truth thereof.

18      12.   Defendant denies the allegations of paragraph "12" of the Complaint in  
 19 that it presently lacks sufficient knowledge or information upon which to form a belief  
 20 as to the truth thereof.

21      13.   Defendant denies the allegations of paragraph "13" of the Complaint in  
 22 that it presently lacks sufficient knowledge or information upon which to form a belief  
 23 as to the truth thereof.

24      14.   Defendant denies the allegations of paragraph "14" of the Complaint in  
 25 that it presently lacks sufficient knowledge or information upon which to form a belief  
 26 as to the truth thereof.

27      15.   Defendant admits that it is not affiliated with Netgear. Defendant denies  
 28 that any party needs to be "authorized" by a brand in order to resell genuine goods.

1 *See, e.g., NEC Elecs. v. CAL Cir. Abco*, 810 F.2d 1506, 1509 (9th Cir. 1987)  
 2 (“Trademark law generally does not reach the sale of genuine goods bearing a true  
 3 mark even though such sale is without the mark owner’s consent.”).

4 Defendant denies the remainder of the allegations in paragraph “15” of the Complaint  
 5 in that it presently lacks sufficient knowledge or information upon which to form a  
 6 belief as to the truth thereof.

7       16. Defendant admits that it has sold NETGEAR branded products through  
 8 online marketplaces, including the Amazon.com marketplace. Defendant denies the  
 9 remainder allegations of paragraph “16” of the Complaint.

10       17. Defendant denies that any party needs to be “authorized” by a brand in  
 11 order to resell genuine goods. *See, e.g., NEC Elecs. v. CAL Cir. Abco*, 810 F.2d 1509  
 12 (9th Cir. 1987) (“Trademark law generally does not reach the sale of genuine goods  
 13 bearing a true mark even though such sale is without the mark owner’s consent.”).  
 14 Defendant denies the remainder of the allegations in paragraph “17” of the Complaint  
 15 in that it presently lacks sufficient knowledge or information upon which to form a  
 16 belief as to the truth thereof.

17       18. Defendant denies the allegations of paragraph “18” of the Complaint.

18       19. Defendant denies the allegations of paragraph “19” of the Complaint.

19       20. Defendant denies the allegations of paragraph “20” of the Complaint in  
 20 that it presently lacks sufficient knowledge or information upon which to form a belief  
 21 as to the truth thereof.

22       21. Defendant denies the allegations of paragraph “21” of the Complaint.

23       22. Defendant denies the allegations of paragraph “22” of the Complaint.

24       23. Defendant denies the allegations of paragraph “23” of the Complaint.

25       24. Defendant denies the allegations of paragraph “24” of the Complaint.

26       25. Defendant denies the allegations of paragraph “25” of the Complaint.

27       26. Defendant denies the allegations of paragraph “26” of the Complaint.

28       27. Defendant denies the allegations of paragraph “27” of the Complaint.

1       28. Defendant denies the allegations of paragraph “28” of the Complaint.  
 2       29. Defendant denies the allegations of paragraph “29” of the Complaint.  
 3       30. Defendant denies the allegations of paragraph “30” of the Complaint.  
 4       31. Defendant denies the allegations of paragraph “31” of the Complaint.  
 5       32. Defendant denies the allegations of paragraph “32” of the Complaint.  
 6       33. Defendant denies the allegations of paragraph “33” of the Complaint in  
 7 that it presently lacks sufficient knowledge or information upon which to form a belief  
 8 as to the truth thereof.

9       34. Defendant denies the allegations of paragraph “34” of the Complaint in  
 10 that it presently lacks sufficient knowledge or information upon which to form a belief  
 11 as to the truth thereof.

12       35. Defendant denies the allegations of paragraph “35” of the Complaint in  
 13 that it presently lacks sufficient knowledge or information upon which to form a belief  
 14 as to the truth thereof.

15       36. Defendant denies the allegations of paragraph “36” of the Complaint in  
 16 that it presently lacks sufficient knowledge or information upon which to form a belief  
 17 as to the truth thereof.

18       37. Defendant denies the allegations of paragraph “37” of the Complaint in  
 19 that it presently lacks sufficient knowledge or information upon which to form a belief  
 20 as to the truth thereof.

21       38. Defendant denies the allegations of paragraph “38” of the Complaint in  
 22 that it presently lacks sufficient knowledge or information upon which to form a belief  
 23 as to the truth thereof.

24       39. Defendant denies the allegations of paragraph “39” of the Complaint.

25       40. Defendant denies the allegations of paragraph “40” of the Complaint.

26       41. Defendant denies the allegations of paragraph “41” of the Complaint.

27       42. Defendant denies the allegations of paragraph “42” of the Complaint.

28       43. Defendant denies the allegations of paragraph “43” of the Complaint.

1       44. Defendant denies the allegations of paragraph “44” of the Complaint in  
2 that it presently lacks sufficient knowledge or information upon which to form a belief  
3 as to the truth thereof.

4       45. Defendant denies the allegations of paragraph “45” of the Complaint.

5       46. Defendant denies the allegations of paragraph “46” of the Complaint.

6       47. Defendant denies the allegations of paragraph “47” of the Complaint.

7       48. Defendant denies the allegations of paragraph “48” of the Complaint.

8       49. Defendant denies the allegations of paragraph “49” of the Complaint in  
9 that it presently lacks sufficient knowledge or information upon which to form a belief  
10 as to the truth thereof.

11       50. Defendant denies the allegations of paragraph “50” of the Complaint in  
12 that it presently lacks sufficient knowledge or information upon which to form a belief  
13 as to the truth thereof.

14       51. Defendant denies the allegations of paragraph “51” of the Complaint in  
15 that it presently lacks sufficient knowledge or information upon which to form a belief  
16 as to the truth thereof.

17       52. Defendant denies the allegations of paragraph “52” of the Complaint in  
18 that it presently lacks sufficient knowledge or information upon which to form a belief  
19 as to the truth thereof.

20       53. Defendant denies the allegations of paragraph “53” of the Complaint in  
21 that it presently lacks sufficient knowledge or information upon which to form a belief  
22 as to the truth thereof.

23       54. Defendant denies the allegations of paragraph “54” of the Complaint in  
24 that it presently lacks sufficient knowledge or information upon which to form a belief  
25 as to the truth thereof.

26       55. Defendant denies the allegations of paragraph “55” of the Complaint in  
27 that it presently lacks sufficient knowledge or information upon which to form a belief  
28 as to the truth thereof.

1       56. Defendant denies the allegations of paragraph “56” of the Complaint in  
2 that it presently lacks sufficient knowledge or information upon which to form a belief  
3 as to the truth thereof.

4       57. Defendant denies the allegations of paragraph “57” of the Complaint in  
5 that it presently lacks sufficient knowledge or information upon which to form a belief  
6 as to the truth thereof.

7       58. Defendant denies the allegations of paragraph “58” of the Complaint in  
8 that it presently lacks sufficient knowledge or information upon which to form a belief  
9 as to the truth thereof.

10       59. Defendant denies the allegations of paragraph “59” of the Complaint in  
11 that it presently lacks sufficient knowledge or information upon which to form a belief  
12 as to the truth thereof.

13       60. Defendant denies the allegations of paragraph “60” of the Complaint.

14       61. Defendant denies the allegations of paragraph “61” of the Complaint.

15       62. Defendant denies the allegations of paragraph “62” of the Complaint in  
16 that it presently lacks sufficient knowledge or information upon which to form a belief  
17 as to the truth thereof. To the extent paragraph “62” of the Complaint alleges that  
18 Defendant engages in “review suppression,” Defendant denies the allegations of  
19 paragraph “62” of the Complaint.

20       63. Defendant denies the allegations of paragraph “63” of the Complaint.

21       64. Defendant denies the allegations of paragraph “64” of the Complaint.

22       65. Defendant denies the allegations of paragraph “65” of the Complaint.

23       66. Defendant denies the allegations of paragraph “66” of the Complaint.

24       67. Defendant denies the allegations of paragraph “67” of the Complaint.

25       68. Defendant denies the allegations of paragraph “68” of the Complaint.

26       69. Defendant denies the allegations of paragraph “69” of the Complaint.

27       70. Defendant denies the allegations of paragraph “70” of the Complaint.

28       71. Defendant denies the allegations of paragraph “71” of the Complaint.

72. Defendant denies the allegations of paragraph "72" of the Complaint.

## COUNT I

3       73. Defendant repeats and reiterates each and every one of the foregoing  
4 answers in response to the allegations made in paragraph "73" of the Complaint herein  
5 with the same force and effect as though set forth at length.

5       74. Defendant admits that the Complaint purports to allege a claim for  
6 federal trademark infringement under 15 U.S.C. § 1114; however, Defendant denies  
7 that the Complaint states such a claim or that the action has any legal merit.  
8

9 75. Defendant denies the allegations of paragraph "75" of the Complaint.

10 76. Defendant denies the allegations of paragraph "76" of the Complaint.

11 77. Defendant denies the allegations of paragraph "77" of the Complaint.

12 78. Defendant denies the allegations of paragraph "78" of the Complaint.

13 79. Defendant denies the allegations of paragraph "79" of the Complaint.

## **COUNT II**

15        80. Defendant repeats and reiterates each and every one of the foregoing  
16 answers in response to the allegations made in paragraph "80" of the Complaint herein  
17 with the same force and effect as though set forth at length.

18        81. Defendant admits that the Complaint purports to allege a claim for false  
19 designation of origin under 15 U.S.C. § 1125(a); however, Defendant denies that the  
20 Complaint states such a claim or that the action has any legal merit.

21        82. Defendant denies the allegations of paragraph "82" of the Complaint in  
22 that it presently lacks sufficient knowledge or information upon which to form a belief  
23 as to the truth thereof.

24        83. Defendant denies the allegations of paragraph "83" of the Complaint in  
25 that it presently lacks sufficient knowledge or information upon which to form a belief  
26 as to the truth thereof.

27 84. Defendant denies the allegations of paragraph "84" of the Complaint.

28 85. Defendant denies the allegations of paragraph “85” of the Complaint.

86. Defendant denies the allegations of paragraph “86” of the Complaint.
87. Defendant denies the allegations of paragraph “87” of the Complaint.
88. Defendant denies the allegations of paragraph “88” of the Complaint.
89. Defendant denies the allegations of paragraph “89” of the Complaint.
90. Defendant denies the allegations of paragraph “90” of the Complaint.

## **COUNT III**

91. Defendant repeats and reiterates each and every one of the foregoing answers in response to the allegations made in paragraph "91" of the Complaint herein with the same force and effect as though set forth at length.

10. Defendant denies the allegations of paragraph “92” of the Complaint.

11. Defendant denies the allegations of paragraph “93” of the Complaint.

12. Defendant denies the allegations of paragraph “94” of the Complaint.

13. Defendant denies the allegations of paragraph “95” of the Complaint.

14. Defendant denies the allegations of paragraph “96” of the Complaint.

15. Defendant denies the allegations of paragraph “97” of the Complaint.

16. Defendant denies the allegations of paragraph “98” of the Complaint.

**COUNT IV**

18        99. Defendant repeats and reiterates each and every one of the foregoing  
19 answers in response to the allegations made in paragraph “99” of the Complaint herein  
20 with the same force and effect as though set forth at length.

21       100. Paragraph “100” states a legal conclusion to which no response is  
22 required. To the extent a response is required, Defendant denies the allegations of  
23 paragraph “100” of the Complaint.

24 101. Defendant denies the allegations of paragraph “101” of the Complaint.  
25 102. Defendant denies the allegations of paragraph “102” of the Complaint.  
26 103. Defendant denies the allegations of paragraph “103” of the Complaint.  
27 104. Defendant denies the allegations of paragraph “104” of the Complaint.  
28 105. Defendant denies the allegations of paragraph “105” of the Complaint.

## COUNT V

106. Defendant repeats and reiterates each and every one of the foregoing answers in response to the allegations made in paragraph “106” of the Complaint herein with the same force and effect as though set forth at length.

107. Paragraph “107” states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph “107” of the Complaint.

8 108. Defendant denies the allegations of paragraph “108” of the Complaint.

9 109. Defendant denies the allegations of paragraph “109” of the Complaint.

10 110. Defendant denies the allegations of paragraph “110” of the Complaint.

111. Defendant denies the allegations of paragraph “111” of the Complaint.

12 112. Defendant denies the allegations of paragraph “112” of the Complaint.

## **PRAYER FOR RELIEF**

14 To the extent that any response is required to any of the paragraphs contained  
15 in the Complaint following the word “WHEREFORE” (on pages 19–21 of the  
16 Complaint), Defendant denies that Plaintiff is entitled to any relief requested. To the  
17 extent that any statement in the prayer for relief is deemed factual, it is denied.

## **AFFIRMATIVE DEFENSES**

19 Defendant incorporates by reference the foregoing paragraphs in their entirety  
20 and assert the following affirmative defenses to the claims set forth in the Complaint.  
21 Defendant reserves the right to allege additional Affirmative Defenses as they become  
22 known, and accordingly to amend this Answer.

## **FIRST AFFIRMATIVE DEFENSE**

24 The Complaint fails to state a claim upon which relief may be granted. In  
25 particular, the Complaint fails to provide any factual support for any of the claims  
26 from which the Court could conclude that Defendant is liable for any claim.

**SECOND AFFIRMATIVE DEFENSE**

2 The Complaint are barred, in whole or in part, by the doctrines of acquiescence,  
 3 waiver, estoppel, laches, and/or the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

5 Plaintiff's claims against Defendant are barred by the exhaustion doctrine/first  
 6 sale doctrine. In particular, the NETGEAR brand products sold by Defendant are not  
 7 materially different than the NETGEAR products authorized for sale in the United  
 8 States by Plaintiff.

**FOURTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred, in whole or in part, under the doctrine of unclean  
 11 hands. In particular, Plaintiff's claims are barred by its own unlawful conduct,  
 12 including its violations of the Magnuson-Moss Warranty Act and N.Y. GBL § 369-b.

**FIFTH AFFIRMATIVE DEFENSE**

14 Plaintiff's claims against Defendant are barred, in whole or in part, by  
 15 trademark misuse.

**SIXTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims against Defendant are barred by license. On information and  
 18 belief, Plaintiff has granted Amazon an irrevocable license to use the NETGEAR  
 19 trademark on ASINs at issue and to sub-license the NETGEAR trademark to third-  
 20 party resellers, like Defendants.

**SEVENTH AFFIRMATIVE DEFENSE**

22 Defendant is not subject to personal jurisdiction in this Court.

**RELIEF REQUESTED**

24 WHEREFORE, Defendant denies that Plaintiff is entitled to any relief and  
 25 specifically to the relief requested and Defendant request relief as follows:

26 1. That Plaintiff's Complaint be dismissed with prejudice in its entirety;  
 27 and denial of any and all relief and prayers for damages to Plaintiff;

2. That judgment be entered in favor of Defendant and that Defendant be awarded costs to the extent provided by law, and attorney's fees; and
3. Any such further or other relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Defendant demands a trial by jury of all issues so triable.

## **COUNTERCLAIMS**

Defendant/Counterclaim-Plaintiff CHOICE ELECTRONICS INC. (“Choice Electronics”), through its counsel, as and for its counterclaims against Plaintiff/Counterclaim-Defendant NETGEAR INC. (“Netgear”) alleges as follows:

## THE PARTIES

11        1.      Choice Electronics is a New York corporation with a place of business  
12 located in Brooklyn, York 11203.

13        2.      On information and belief, Netgear is a Delaware corporation with a  
14 principal place of business in San Jose, California.

## **JURISDICTION AND VENUE**

16       3.     This Court has subject matter jurisdiction over these counterclaims  
17 pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202; the  
18 Trademark Act of 1946, as amended, 15 U.S.C. § 1051 et seq., including 15 U.S.C. §  
19 1121; and 28 U.S.C. §§ 1331, 1338, and 1367.

20 4. This Court also possesses subject matter jurisdiction under 28 U.S.C. §  
21 1332 because complete diversity exists between Choice Electronics and Netgear and  
22 the amount in controversy is greater than \$75,000.

23 5. This Court has personal jurisdiction over Netgear because it has  
24 subjected itself to the jurisdiction of this Court for purposes of these counterclaims.

25 6. This Court also has personal jurisdiction over Netgear because it resides  
26 in this District.

27        7.      With respect to these counterclaims, venue is proper in this District  
28 pursuant to 28 U.S.C. § 1391.

## **BACKGROUND FACTS**

8. Netgear asserts in Paragraphs 5 and 9 of the Complaint that it “is a computer networking company that produces networking hardware” which “advertises, distributes, and sells its products to consumers under the NETGEAR Marks.” (“Netgear Products”).

9. Netgear is the owner-of-record of U.S. Trademark Registration Nos. 2,124,219 and 5,760,720 for the mark NETGEAR (“the Netgear Registrations”).

8        10. On information and belief, Netgear sells a substantial amount of Netgear  
9 Products in the state of New York. For example, Netgear’s website identifies at least  
10 one authorized reseller with stores in New York and Netgear recently reported in its  
11 2024 Annual Report filed with the SEC that Amazon accounts for 19% of its sales.

12        11.    Choice Electronics is in the business of lawfully acquiring and re-selling  
13 various products for a profit.

14 12. Choice Electronics resells products through an Amazon storefront.

15        13. Since its formation, Choice Electronics has served thousands of  
16 customers.

17        14. Choice Electronics and Netgear are competitors in the sale of computer  
18 network hardware products.

## **ONLINE MARKETPLACES**

20 15. On information and belief, Amazon is the world's largest online retailer.

16. According to published reports, “Amazon’s market cap alone is bigger  
than the nine biggest U.S. retailers put together.” Dorothy Neufeld, *Visualizing the  
Size of Amazon, the World’s Most Valuable Retailer*, Visual Capitalist (July 2, 2020),  
<https://www.visualcapitalist.com/amazon-worlds-most-valuable-retailer/>.

17. Amazon's online e-commerce platform allows third parties, like Choice  
18. Electronics, to sell products on its e-commerce platform.

1       18. The privilege of selling on Amazon is highly advantageous, as Amazon  
 2 provides third parties with exposure to the world marketplace on a scale that no other  
 3 online retailer can currently provide.

4       19. A significant portion of Choice Electronics' business is derived from the  
 5 sale of products on Amazon and, in particular, through its Amazon storefront.

6       20. Once Choice Electronics acquires products from reputable sources,  
 7 Choice Electronics resells the same products on Amazon at a profit.

8       21. Choice Electronics has invested significant efforts into building a  
 9 successful and reputable Amazon storefront.

10      22. Since its inception, Choice Electronics' Amazon storefront has amassed  
 11 thousands of reviews and holds a near perfect customer rating.

12      23. Any harm that comes to the relationship between Choice Electronics and  
 13 Amazon creates the potential for serious irreparable injury to Choice Electronics.

14      24. Netgear's illegal actions, as detailed herein, have irreparably damaged,  
 15 and threaten to destroy, Choice Electronics' successful business.

16      **NETGEAR VIOLATES AMAZON'S POLICIES AND ENGAGES**  
 17      **IN PRICE MANIPULATION AND REVIEW MANIPULATION**

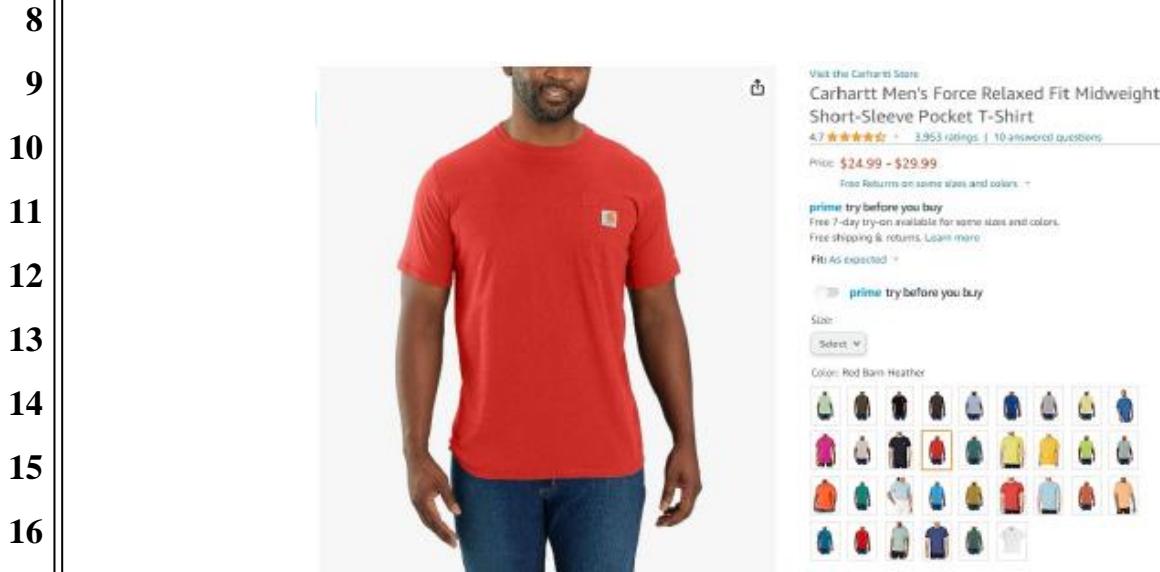
18      25. On information and belief, Netgear is a vendor to Amazon. In other  
 19 words, Netgear supplies numerous Netgear Products to Amazon on a wholesale basis,  
 20 which in turn are advertised and sold to Amazon customers.

21      26. Amazon allows its vendors and third-party sellers to create "variation"  
 22 relationships between products sold on Amazon.com that are substantially the same.  
 23 Such products may differ only in narrow, specific ways—such as color or quantity.  
 24 According to Amazon, substantially different products should not share a variation  
 25 relationship.

26      27. Products that have a variation relationship share the same product detail  
 27 page. Each product in the variation relationship will appear as an alternative choice  
 28 on the product detail page and when a shopper selects a different product in the

1 variation relationship, the content of the product detail page, such as the pictured  
 2 product, the product description, or the price, may change.

3       28. The variation relationship enables buyers to compare and choose among  
 4 product attributes (such as color, size, quantity, or flavor) from a single product detail  
 5 page, thereby facilitating customer choice and ease of shopping. An example would  
 6 be the same shirt that comes in multiple colors and different sizes. An Amazon.com  
 7 page explaining variation relationships, gives the following example:



17       29. The product detail page of products that are in a variation relationship  
 18 displays the total number of ratings and reviews and the average star rating for all the  
 19 products in the variation relationship. The product detail page of products that are in  
 20 a variation relationship shows the ratings and reviews of all the products in the  
 21 variation relationship.

22       30. Recognizing the immense potential for consumer confusion and false  
 23 advertising by sellers, Amazon has implemented a strict and detailed “variation  
 24 policy,” to which all sellers must abide.

25       31. Specifically, in acknowledging that the misuse of variations/parent-child  
 26 relationships “create a negative customer experience,” Amazon specifically prohibits  
 27 vendors from “[a]dding incorrect child variations that are not true variations of the

parent product.” Such prohibited conduct includes, *inter alia*, (i) adding products that are fundamentally different from the parent ASIN; (ii) adding products images and/or names that are that are fundamentally different from the parent ASIN; and (iii) adding products that are newer versions or models of the parent ASIN.

5 32. Netgear has ignored these policies and has created variation relationships  
6 amongst Netgear Products that are unrelated to each other, including the illustrative  
7 examples described below. In so doing, Netgear has made false statements that are  
8 literally false and have misled and confused consumers and harmed Choice  
9 Electronics.

10           33. For example, on information and belief, on, or about, January 6, 2020,  
11 Netgear created and designed an Amazon listing under ASIN B082LZKYFL offering  
12 for sale the “NETGEAR Orbi Whole Home Tri-band WiFi 6 Mesh Network System  
13 (RBK853) – Router With 2 Satellite Extenders, Security Features, Coverage Up To  
14 7,500 Square Feet, 100 Devices, AX6000 (Up to 6Gbps)” (the “Wi-Fi 6 Product”):

1       34. Between January 2020 and September 2023, the above ASIN collected  
 2 thousands of reviews and had an average rating of greater than 4 out 5 stars.

3       35. In 2023, Netgear introduced its “Wi-Fi 7 System” and accordingly  
 4 released new products to be compatible with that new system. To that end, on  
 5 information and belief, in about, September 2023 Netgear released the “NETGEAR  
 6 Orbi 970 Series Quad-Band WiFi 7 Mesh Network System (RBE973S), Router + 2  
 7 Satellite Extenders, Security Features, Up to 27Gbps, Covers Up to 10,000 sq. ft., 200  
 8 Devices, 10 Gig Internet Port” (the “Wi-Fi7 Product”).

9       36. The Wi-Fi7 Product is fundamentally different from the Wi-Fi6. For  
 10 example, the two products are not compatible with the same underlying Wi-Fi  
 11 technologies, have materially different designs and are offered for sale at drastically  
 12 different price points (the Wifi7 Product is \$1,000 more expensive than the older  
 13 fundamentally different Wi-Fi 6 Product).

14       37. However, rather than create a new ASIN for this new product listing on  
 15 Amazon, Netgear created a variation relationship to ASIN B082LZKYFL (for the Wi-  
 16 Fi 6 Product) to unlawfully and deceptively take advantage of the reviews and ratings  
 17 already found on ASIN B082LZKYFL (for the Wi-Fi 6 Product) for this unrelated  
 18 Wi-Fi 7 Product.

19

20

21

22

23

24

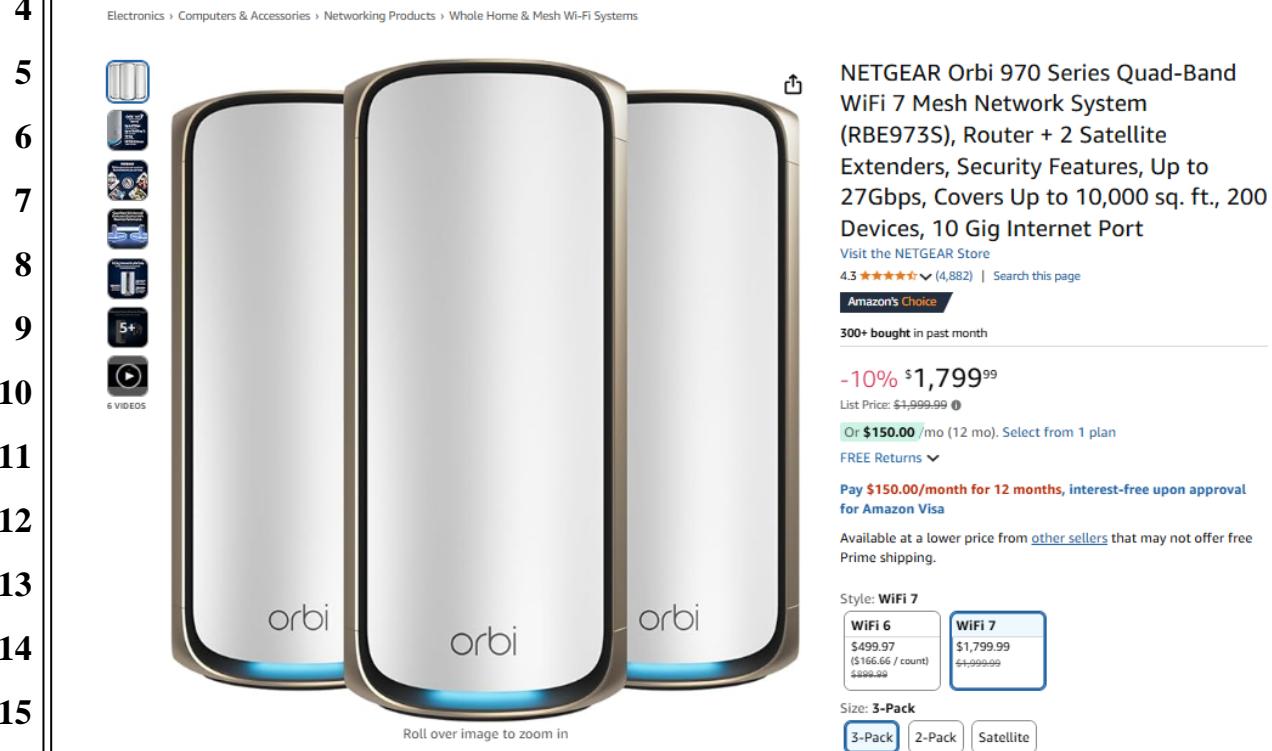
25

26

27

28

1       38. Accordingly, on information and belief, on or about September 19, 2023,  
2 Netgear created and designed a new ASIN for the Wi-Fi7 Product as a variation of  
3 the 2020 ASIN for the Wi-Fi 6 Product:



16 39. By creating the variation relationship between the Wi-Fi 6 and Wi-Fi 7  
17 Products, Netgear falsely represented to consumers that the two products are  
18 substantially the same, when in fact they are fundamentally different.

19        40. By doing so, Netgear was able to deceive consumers into believing that  
20 the fundamentally different, newly launched Wi-Fi 7 Product already had a high rating  
21 on Amazon with thousands of customer reviews, when, in reality, only small fraction  
22 of the ratings and reviews pertain to the Wi-Fi 7 Product.

23        41.     Specifically, by looking at the advertisement/listing for the Wi-Fi 7  
24 Product, consumers would be misled and deceived into believing that that the product  
25 garnered about 4,882 ratings and 2,320 customer reviews. In reality however, only a  
26 small fraction of those ratings and reviewed (which were accumulated since the 2020  
27 release of the Wi-Fi 6 Product) pertain to the Wi-Fi 7 Product.

1       42. By listing the Wi-Fi 6 and Wi-Fi 7 Products as variations of each other  
 2 on Amazon, Netgear is making the literally false claim that the products are  
 3 substantially related (e.g. differ only in size, color, or the like).

4       43. However, as detailed herein, that is not the case as the Wi-Fi 6 and Wi-  
 5 Fi 7 Products are not merely different in minor attributes (e.g., size, color, or the like),  
 6 but are rather fundamentally different as they employ entirely different technologies  
 7 and designs as reflected by their \$1000 price difference.

8       44. The Wi-Fi7 Product ASIN also displays the “Amazon’s Choice” badge,  
 9 which Amazon explains is based in part on customer ratings and “makes it easy to  
 10 discover products that other customers frequently choose for similar shopping needs.”

11       45. This recognition not only gives legitimacy to a product and allows  
 12 customers to make a well-informed purchasing decision, but also results in more  
 13 impressions, higher conversions, higher rankings, and ultimately higher sales.

14       46. On information and belief, by creating the Wi-Fi7 Product ASIN as a  
 15 false “variation” of the Wi-Fi6 Product, and thereby causing the review of the Wi-Fi6  
 16 Product to attach to the Wi-Fi7 Product, Netgear has caused the Wi-Fi7 Product to be  
 17 advertised with an unwarranted “Amazon’s Choice” Badge.

18       47. As a result of Netgear’s intentional misstatements and false grouping of  
 19 the Wi-Fi7 Product as a “variation,” consumers are deceived and confused into  
 20 believing that Netgear’s Wi-Fi7 Product is an “Amazon’s Choice” product, when, on  
 21 information and belief, it is not.

22       48. Because many consumers rely upon the “Amazon’s Choice” designation  
 23 to make purchasing decisions, consumers are led to erroneously purchase the Wi-Fi7  
 24 Product, believing that it is an “Amazon’s Choice” product when, in fact, the  
 25 “Amazon’s Choice” status is a result of Netgear’s variation manipulation—and not  
 26 the result of actual reviews for the Wi-Fi7 Product.

27

28

1       49. On information and belief, Netgear routinely improperly creates  
 2 variation listings between Netgear Products that are not substantially related to each  
 3 other.

4       50. By listing new unrelated products as “variations” of pre-existing  
 5 products, Netgear is, either directly or by implication, falsely indicating to consumers  
 6 that the new products are substantially the same as the pre-existing product, and only  
 7 differs in attributes such as size or color, even though the new products are  
 8 fundamentally different and unrelated.

9       51. By listing new unrelated products as “variations” of pre-existing  
 10 products, Netgear is, either directly or by implication, misleading consumers into  
 11 wrongfully believing that reviewers/purchasers of certain Netgear Products sold on  
 12 Amazon used and endorsed other fundamentally different products.

13       52. By listing new unrelated products as “variations” of pre-existing  
 14 products, Netgear is, either directly or by implication, misleading consumers into  
 15 wrongly believing that prior reviews and ratings for pre-existing products belong to  
 16 new unrelated fundamentally different products.

17       53. On information and belief, 92% of consumers are more likely buy  
 18 products from Amazon and at least 75% of consumers consider product reviews on  
 19 Amazon prior to making a purchase. See “92% of Consumers Are More Likely to  
 20 Buy Products From Amazon According to Feedvisor’s Consumer Report”, (Nov.  
 21 2021) BusinessWire (A Berkshire Hathaway Company), available at  
<https://www.businesswire.com/news/home/20211102005144/en/92-of-Consumers-Are-More-Likely-to-Buy-Products-From-Amazon-According-to-Feedvisors-Consumer-Report>. As such, upon information and belief, consumer reviews are an  
 25 essential factor in the purchase decision-making process and consumers are more  
 26 likely to purchase products that have amassed significant positive reviews from prior  
 27 purchasers.

28

1       54. In paragraph 50 of the Complaint, Netgear alleges that “[c]ustomer  
 2 reviews are important to a buyer because they provide honest insights from other  
 3 shoppers, helping a buyer make informed purchasing decisions.

4       55. Similarly, in paragraph 51 of the Complaint, Netgear alleges that  
 5 “[c]ustomer reviews help buyers determine if a product matches its description and  
 6 performs as expected.”

7       56. Netgear further alleges in paragraph 55 of the Complaint that  
 8 “...customer reviews serve as a powerful research tool that allows buyers to shop with  
 9 confidence and make better purchasing decisions.”

10       57. Accordingly, Netgear’s false advertising conduct entices consumers to  
 11 purchase products from Netgear and in turn harms competitors, including Choice  
 12 Electronics, by diverting customers away from them.

13       58. The United States Federal Trade Commission (“FTC”) has deemed these  
 14 same activities—including selling a new, unrelated product under a pre-existing  
 15 listing so that it could cause the reviews from a prior product extend to the new,  
 16 unrelated product—to constitute false advertisement and unfair or deceptive acts or  
 17 practices. See Exhibit 1).

18       59. In February 2023, the FTC took action against a vitamin manufacturer  
 19 that merged its new products on Amazon with different well-established products that  
 20 had more ratings and reviews. <https://www.ftc.gov/legal-library/browse/cases-proceedings/2223019-bountiful-company>.

22       60. The Commission noted that “[b]oosting your products by hijacking  
 23 another product’s ratings or reviews is a relatively new tactic, but is still plain old  
 24 false advertising[.]” <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-charges-supplement-marketer-hijacking-ratings-reviews-amazoncom-using-them-deceive-consumers>.

27       61. The vitamin manufacturer was subsequently ordered to pay \$600,000 to  
 28 the FTC as monetary relief, the majority of which was returned to consumers earlier

1 this year. <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-sends-more-527000-refunds-bountiful-consumers-deceived-review-hijacking-amazoncom>.

3 62. Here, Netgear is engaged in the same “plain old false advertising” that  
4 the FTC deems false advertising and a deceptive trade practice.

5 63. Choice Electronics has been harmed by Netgear’s review manipulation.  
6 For instance, Choice Electronics, lawfully and in accordance with Amazon’s policies,  
7 honestly offers for sale products that compete with those sold by Netgear and that do  
8 not employ Netgear’s improper variation relationships.

9 64. For instance, the different iteration of the Wi-Fi 6 Product that the  
10 Complaint alleges Choice Electronics sells on a separate listing than the one detailed  
11 herein is properly listed as a variation of a different related version of the Wi-Fi 6  
12 Product, which only differs in nominal ways from the one purportedly offered for sale  
13 by Choice Electronics. (Complaint ¶ 20, p.5).

14 65. However, Netgear’s unlawful practices deceives consumers by driving  
15 consumers away from its competitors (like Choice Electronics), causing Choice  
16 Electronics to lose sales.

17 **NETGEAR VIOLATES FEDERAL AND STATE WARRANTY LAWS**

18 66. Netgear’s website includes a page titled “Limited Hardware Warranty,”  
19 claiming that a warranty applies to “its products” (the “Netgear Warranty”) but that  
20 “If you purchase a NETGEAR product from an unauthorized reseller or if the original  
21 factory serial number has been removed, defaced or altered, this NETGEAR warranty  
22 will not be valid” (the “Warranty Disclaimer Policy”).  
23 <https://www.netgear.com/about/warranty/>.

24 67. On information and belief, the prices for Netgear Products offered by  
25 Choice Electronics and other so-called “unauthorized resellers” of genuine Netgear  
26 Products are often less than the prices charged for those very same products by  
27 Netgear and its authorized resellers.

1       68. On information and belief, Netgear does not disclose to consumers its  
 2 list of “authorized” resellers. *See, e.g.*, <https://community.netgear.com/t5/Pro-WiFi-Access-Points/Netgear-Authorized-Resellers-List-WAX620/mp/2256277/highlight/true>. (“I . . . called Netgear and spoke to James in customer  
 3 support. . . . I asked him if there was a list of authorized resellers for Netgear products  
 4 His responses, Yes, but they don't give that information out!”).

5       69. Pursuant to 15 U.S.C. § 2302, “any warrantor warranting a consumer  
 6 product to a consumer by means of a written warranty shall, to the extent required by  
 7 rules of the Commission, fully and conspicuously disclose in simple and readily  
 8 understood language the terms and conditions of such warranty” “prior to the sale of  
 9 the product to him.”

10       70. Pursuant to 16 CFR § 702.3(c), “[a]ny seller who offers for sale to  
 11 consumers consumer products with written warranties by means of” “any offer for  
 12 sale . . . which includes instructions for ordering the product which do not require a  
 13 personal visit to the seller’s establishment,” (e.g., via an internet webpage) “shall  
 14 clearly and conspicuously disclose in such . . . solicitation in close conjunction to the  
 15 description of the warranted product” “either: (i) The full text of the written warranty;  
 16 or (ii) The address of the Internet Web site of the warrantor where such warranty terms  
 17 can be reviewed (if such Internet Web site exists), as well as that the written warranty  
 18 can be obtained free upon specific request, and the address or phone number where  
 19 such warranty can be requested.”

20       71. On information and belief, Netgear does not comply with 16 CFR §  
 21 702.3(c). For example, Netgear identifies Amazon.com as an authorized reseller, but  
 22 offers for sale of Netgear Products on the Amazon.com marketplace do not include  
 23 the terms of the Netgear Warranty nor the address of the Internet Web site of Netgear.

24       72. By failing to comply with the federal requirements for consumer product  
 25 warranties, Netgear does not offer any valid written warranty for Netgear Products.

26  
 27  
 28

1       73. By publishing its invalid Netgear Warranty on its website, Netgear  
 2 deceived consumers regarding the legitimacy and lawfulness of that warranty.

3       74. Pursuant to N.Y. G.B.L. § 369-b, “[a] warranty or guarantee of  
 4 merchandise may not be limited by a manufacturer doing business in this state solely  
 5 for the reason that such merchandise is sold by a particular dealer or dealers, or that  
 6 the dealer who sold the merchandise at retail has, since the date of sale, either gone  
 7 out of business or no longer sells such merchandise. Any at-tempt to limit the  
 8 manufacturer’s warranty or guarantee for the aforesaid reason is void.”

9       75. By disclaiming the Netgear Warranty when consumers purchase Netgear  
 10 Products from sellers other than Netgear and its authorized resellers under its  
 11 Warranty Disclaimer Policy, Netgear violates N.Y. G.B.L. § 369-b.

12       76. Netgear’s disclaimer of the Netgear Warranty when consumers purchase  
 13 Netgear Products from sellers other than Netgear and its authorized resellers is willful.

14       77. Netgear’s Warranty Disclaimer Policy is void and unenforceable  
 15 pursuant to N.Y. G.B.L. § 369-b.

16       78. By publishing its unenforceable Warranty Disclaimer Policy on its  
 17 website, Netgear Gaming deceived consumers regarding the legitimacy and  
 18 lawfulness of that policy.

19       79. Netgear’s Warranty Disclaimer Policy is a deceptive trade practice.

20       80. Netgear’s Warranty Disclaimer Policy has injured consumers by  
 21 penalizing them when they purchase genuine Netgear Products from sellers other than  
 22 Netgear and its authorized re-sellers.

23       81. On information and belief, Netgear’s Warranty Disclaimer Policy has  
 24 injured consumers by steering them towards sellers who charge higher prices for  
 25 Netgear Products.

26       82. Choice Electronics has been injured by Netgear’s Warranty Disclaimer  
 27 Policy as that illegal Policy has discouraged and dissuaded consumers from  
 28 purchasing genuine Netgear Products from Choice Electronics.

**COUNTERCLAIM I****(Declaratory Judgment of Non-Infringement of the Netgear Trademarks)**

3       83.    Choice Electronics incorporates by reference and realleges each of the  
4 allegations set forth in Paragraphs 1–82 above.

5       84.    Netgear has asserted claims against Choice Electronics for purported  
6 infringement of its purported trademark rights, including the Netgear Registrations.

7       85.    Choice Electronics contends that it has never infringed on any of  
8 Netgear's purported trademarks, and in particular, its purchase and resale of Netgear  
9 Products were at all times lawful.

10      86.    Choice Electronics seeks to sell Netgear Products on Amazon and  
11 elsewhere on the Internet.

12      87.    As a result of Netgear's assertion of claims against Choice Electronics  
13 for infringement of Netgear's purported trademark rights, there is a definite and  
14 concrete dispute, touching the legal relations of the parties to this action.

15      88.    Choice Electronics disputes Netgear's allegation of infringement and  
16 seeks an order declaring that Choice Electronics has not infringed Counterclaim-  
17 Defendants' trademark rights on the following grounds: (1) Choice Electronics' sale  
18 of Netgear Products has not and does not create a likelihood of confusion among  
19 consumers; (2) to the extent Choice Electronics used the NETGEAR trademarks, that  
20 use was permissible pursuant to the exhaustion doctrine/first sale doctrine; and (3) to  
21 the extent Choice Electronics used the NETGEAR trademarks, that use was  
22 permissible or licensed use.

**COUNTERCLAIM II****(False Advertisement Pursuant to 15 U.S.C. § 1125)**

25      89.    Choice Electronics incorporates by reference and realleges each of the  
26 allegations set forth in Paragraphs 1–88 above.

27      90.    This is a claim for false advertising under 15 U.S.C. § 1125(a).

1       91. Choice Electronics and Netgear compete in the computer network  
 2 products industry. Choice Electronics has a commercial interest in its commercial and  
 3 business reputation.

4       92. Choice Electronics has established a business reputation as a popular and  
 5 trusted seller of computer products on Amazon's online marketplace.

6       93. In connection with its advertising and promotion of Netgear Products,  
 7 Netgear has made false or misleading descriptions of fact, or misrepresentations of  
 8 fact, concerning the nature, characteristics, and qualities of Netgear Products.

9       94. Netgear knowingly manipulates Amazon listings in order to show  
 10 inflated and unwarranted reviews for its products by misleadingly listing new  
 11 products as "variations" of pre-existing products, instead of creating new listings for  
 12 new products.

13       95. As a result, consumers are deceived and confused into believing that  
 14 Netgear Products have amassed significant amounts of positive reviews and high  
 15 ratings, when, in fact, such reviews and ratings merely relate to a prior product.

16       96. In numerous instances in connection with the advertising, promotion,  
 17 offering for sale, or sale of its products sold on Amazon, Netgear represented, directly  
 18 or indirectly, expressly or by implication that: (a) the apparent reviewers of certain of  
 19 its products sold on Amazon had used and endorsed the product; (b) certain of its  
 20 products sold on Amazon.com had received the numbers of customer ratings  
 21 appearing on their Amazon product pages; and (c) certain of its products sold on  
 22 Amazon.com had obtained the average star ratings displayed on their Amazon.com  
 23 product pages.

24       97. In fact, in numerous instances in which Netgear made the representations  
 25 set forth in the prior Paragraph, Netgear improperly created variations for newer or  
 26 weaker selling products sold on Amazon with different or longer or better selling  
 27 products sold on Amazon, and therefore: (a) the apparent reviewers of certain of its  
 28 products sold on Amazon were not actual users or endorsers of the products, but

1 instead had used and endorsed a different product; (b) certain of its products sold on  
 2 Amazon received significantly fewer customer ratings than appeared to be the case  
 3 from their Amazon.com product pages; and (c) certain of its products sold on Amazon  
 4 obtained significantly lower average star ratings than appeared to be the case from  
 5 their Amazon product pages.

6       98. Choice Electronics has invested significant resources into building a  
 7 successful and reputable Amazon storefront, and is being substantially harmed by  
 8 Netgear's unfair business practices and false advertising to consumers.

9       99. Netgear's actions are likely to, or already have and will continue to,  
 10 detrimentally impact Choice Electronics' commercial and business reputation, as well  
 11 as Choice Electronics' sales of Netgear Products on Amazon.

12       100. Choice Electronics' injuries fall within the zone of interest protected by  
 13 the Lanham Act because Netgear's false advertising has caused Choice Electronics to  
 14 suffer a loss of goodwill, a loss of sales, and damage to its commercial and business  
 15 reputation.

16       101. Netgear's wrongful acts as alleged in these Counterclaims constitute  
 17 false or misleading representation of fact under 15 U.S.C. § 1125(a).

18       102. The economic and reputational injuries suffered by Choice Electronics  
 19 were directly caused by Netgear's false and misleading representations.

20       103. As a direct and proximate result of Netgear's actions, constituting false  
 21 or misleading representation of fact, Choice Electronics has been damaged (both in  
 22 the form of lost sales and indirect in the form of loss of goodwill/reputation) and is  
 23 entitled to monetary relief in an amount to be determined at trial.

24       104. The aforesaid conduct of Netgear is causing irreparable injury to Choice  
 25 Electronics and will continue to both damage Choice Electronics and deceive the  
 26 public unless enjoined by this Court. Choice Electronics has no adequate remedy at  
 27 law.

28

### **COUNTERCLAIM III**

## **(Violation of California Business and Professions Code §§ 17200 et seq.)**

105. Choice Electronics incorporates by reference and realleges each of the allegations set forth in Paragraphs 1–104 above.

106. The California Unfair Competition Law, codified at Business and Professions Code sections 17200, et seq., prohibits any unlawful, unfair, or fraudulent business act or practice.

107. Netgear's acts, omissions, misrepresentations, and/or practices constitute unlawful, unfair, and/or fraudulent business acts and practices within the meaning of California Business & Professions Code §§ 17200, et seq.

108. Netgear's misconduct has a tendency and likelihood to deceive members of the public.

109. The foregoing acts and practices have caused substantial harm to Choice Electronics.

110. As a direct and proximate cause of the unlawful, unfair, and fraudulent acts and practices of Netgear, Choice Electronics has lost money and suffered injury in fact and damage in the form of lost sales revenue, fees, and other costs.

111. The aforesaid conduct by Netgear has caused, and unless restrained by this Court will continue to cause, immediate, great, and irreparable harm to Choice Electronics' property and business. Choice Electronics has no adequate remedy at law.

## COUNTERCLAIM IV

## **(Deceptive Trade Practices Under N.Y. General Business Law § 349)**

112. Choice Electronics incorporates by reference and realleges each of the allegations set forth in Paragraphs 1–111 above.

113. N.Y. General Business Law § 349 prohibits any deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service.

114. Netgear's acts, omissions, misrepresentations, and/or practices  
2 constitute deceptive acts or practices within the meaning of N.Y. General Business  
3 Law § 349.

4 115. Netgear's misconduct has a tendency and likelihood to deceive members  
5 of the public.

116. The foregoing acts and practices have caused substantial harm to Choice  
Electronics.

8        117. As a direct and proximate cause of the unlawful, unfair, and fraudulent  
9 acts and practices of Netgear, Choice Electronics has lost money and suffered injury  
10 in fact and damage in the form of lost sales revenue, fees, and other costs.

11 118. As a direct and proximate result of Netgear's willful violation of N.Y.  
12 GBL § 349, Choice Electronics has suffered damages in an amount to be proven at  
13 trial.

14           119. Choice Electronics is entitled to its attorney's fees based on Netgear's  
15 violation of N.Y. GBL § 349.

## **PRAYER FOR RELIEF**

17 | WHEREFORE, Choice Electronics prays for judgment as follows:

18       A. An order declaring that Choice Electronics has not infringed any valid  
19 and enforceable intellectual property rights owned by Counterclaim-Defendant,  
20 including the Netgear Registrations;

21 B. Preliminary and permanent injunctive relief restraining Netgear, its  
22 agents, servants, employees, successors and assigns, and all others in concert and  
23 privity with Netgear, from engaging in further review manipulation and engaging in  
24 other acts of false advertising, unlawful, unfair, and fraudulent acts, and deceptive  
25 business practices.

26 C. An award of all damages that Choice Electronics has suffered as a result  
27 of Netgear's false advertising;



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 1, 2025, I electronically filed the above  
3 document(s) and attachments with the Clerk of Court using CM/ECF which will send  
4 electronic notification of such filing(s) to all registered counsel.

5  
6 Date: May 1, 2025

7 /s/ Tyler R. Dowdall  
8 Tyler R. Dowdall

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28